

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3
4
5 **MARIA RAMIREZ-ROMAN,**

6 **Plaintiff,**

Civil No. 13-1680 (GAG)

7 **v.**

8 **NESTLE PR, et al.,**

9 **Defendants.**
10

11 **OPINION AND ORDER**

12 Maria Ramirez-Roman (“Plaintiff”) brought suit against Nestle PR (“Defendant”) and other
13 entities that have not yet been identified but named as “ABC Insurance,” “DEF Insurance,” “GHI
14 Insurance,” and John and Jane Doe. For the following reasons, the court **DISMISSES** this case
15 **without prejudice** pursuant to Federal Rule of Civil Procedure 41(b).

16 **I. Timeline of Events**

17 On September 5, 2013, Defendant removed this case from the Bayamon Superior Court in
18 Bayamon, Puerto Rico and moved for an extension of time to answer or otherwise plead. (Docket
19 Nos. 1 & 2.) The court granted that motion the next day and Defendant answered on October 7,
20 2013. (Docket Nos. 4 & 5.) The court subsequently referred the case to a magistrate judge for an
21 initial scheduling conference. (Docket No. 6.)

22 The magistrate judge set a conference date and ordered the parties to file a pre-conference
23 memorandum, which was vacated in light of Plaintiff’s lack of legal representation. (Docket Nos.
24 9 & 10.) On November 13, 2013, the magistrate judge granted Plaintiff’s motion for extension of
25 thirty days to find legal representation and informed Plaintiff that she could apply for appointment
26 of pro bono counsel if she lacked financial resources. (Docket Nos. 11 & 12.) The magistrate judge
27 also instructed Plaintiff to file the requisite application with the Clerk of the Court. (Docket No. 12.)
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1 The court sent manual notification to Plaintiff. (See entry between Docket Nos. 12 & 13.)

2 On January 2, 2014, the court noted that Plaintiff failed to follow the magistrate judge's
3 orders and to retain legal representation in a timely manner and ordered her to do so by January 21,
4 2014. (Docket No. 13.) Manual notification was again sent to Plaintiff. (See entry between Docket
5 Nos. 13 & 14.) On February 19, 2014, the court entered an order stating: "Plaintiff has now failed
6 to comply with two court orders to submit documents. Plaintiff shall submit the requisite
7 documentation to the [C]lerk's office by or before March 7, 2014." (Docket No. 14.) Again, manual
8 notification was sent to Plaintiff. (See entry between Docket Nos. 14 & 15.)

9 On February 27, 2014, Plaintiff filed a motion to appoint counsel, which the court referred
10 to the magistrate judge and which the magistrate judge denied without prejudice with instructions
11 to refile the application and actually answer the questions in the application. (Docket Nos. 15-19
12 & entry between 19 & 20.) Plaintiff complied and refiled the motion, the court referred it to the
13 magistrate judge, and the magistrate judge denied it without prejudice for similar reasons, instructing
14 another refiling. (Docket Nos. 20-22.) Manual notification was again issued to Plaintiff. (See entry
15 between Docket Nos. 22 & 23.)

16 On March 28, 2014, Plaintiff filed another motion to appoint counsel, the court again referred
17 it, the magistrate judge granted it on April 3, 2014, and court published notice of it on the docket and
18 manually notified Plaintiff. (Docket Nos. 23-26 & entry between Docket Nos. 26 & 27.) The
19 magistrate judge then scheduled an initial settlement and scheduling conference on May 16, 2014,
20 which the parties jointly moved to continue and which was rescheduled for June 17, 2014. (Docket
21 Nos. 27-29.) Plaintiff's counsel then moved the court to withdraw as Plaintiff's attorney, which the
22 court granted. (Docket Nos. 31 & 33.)

23 The court next entered a show-cause order that stated: "Based on the information provided
24 [by Plaintiff's counsel in requesting to withdraw,] Plaintiff shall show cause as to why this case
25 should not be dismissed. Accordingly, the Initial Scheduling Conference . . . is vacated. **Plaintiff**
26 **shall show cause by 6/24/2014.**" (Docket No. 34 (emphasis in original).) Manual notification was
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1 sent to Plaintiff. (See entry between Docket No. 34 & 35.) On June 25, 2014, the court stated: “The
 2 court ordered Plaintiff to show cause by yesterday . . . and Plaintiff failed to comply. Plaintiff shall
 3 comply by July 3, 2014, or this case shall be dismissed under Rule 41(b). (Docket No. 35.) Manual
 4 notification was sent the same day. (See entry between Docket Nos. 35 & 36.) On July 7, 2014, the
 5 court stated the following:

6 The court has ordered Plaintiff to show cause twice (Docket Nos. 34
 7 and 35) as to why this case should not be dismissed. In its most recent
 8 order, the court informed Plaintiff that it would dismiss this case
 9 under Rule 41(b) for failure to prosecute if Plaintiff failed to comply.
 10 (Docket No. 35.) The court notes that Plaintiff is proceeding pro se
 11 and that the court sent Plaintiff manual notification on June 26, 2014
 of the order to show cause. In an abundance of caution, the court
 orders Plaintiff for the third time to show cause as to why this case
 should not be dismissed. Plaintiff shall do so by July 14, 2014.
 Failure to do so will result in dismissal under Rule 41(b).

12 (Docket No. 36.) Manual notification was sent the same day. (See entry after Docket No. 36.)
 13 All of these deadlines came and went without compliance.

II. Federal Rule of Civil Procedure 41(b)¹

15 The court dismisses this case for Plaintiff’s failure to prosecute claims. “If the plaintiff fails
 16 to prosecute . . . a defendant may move to dismiss the action or any claim against it.” FED. R. CIV.
 17 P. 41(b). District court judges inherently hold the authority to regulate their dockets and First Circuit
 18 precedent permits district court judges to rely upon Rule 41(b) when considering whether to
 19 involuntarily dismiss a case *sua sponte*. See Garcia-Perez v. Hosp. Metropolitano, 597 F.3d 6, 7 (1st
 20 Cir. 2010); see also Link v. Wabash R.R. Co., 370 U.S. 626, 629-33 (1962).

21 A district court must balance its “venerable authority over case management with the larger
 22 concerns of justice, including the strong presumption in favor of deciding cases on the merits.”
 23 Malot v. Dorado Beach Cottages, 478 F.3d 40, 43 (1st Cir. 2007). Indeed, dismissal with prejudice
 24 is the most severe penalty. See Benitez-Garcia v. Gonzalez-Vega, 468 F.3d 1, 4 (1st Cir. 2006). The

26 ¹ Rule 41(b) presumes dismissal on the merits unless the court states otherwise. The court
 27 thus clarifies that this dismissal is not an adjudication on the merits. See FED. R. CIV. P. 41(b).

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1 court only involuntarily dismisses a case for egregious conduct, as measured by “the severity of the
2 violation, the legitimacy of the party’s excuse, repetition of violations, the deliberateness *vel non* of
3 the misconduct, mitigating excuses, prejudice to the other side and to the operation of the court, and
4 the adequacy of lesser sanctions,” as well as any other relevant factors. Robson v. Hallenbeck, 81
5 F.3d 1, 2-3 (1st Cir. 1996). The court thus grapples with the Robson factors.

6 A. Severity of the Violation

7 Plaintiff failed to follow five court orders: two concerning obtaining representation and three
8 concerning the show-cause order regarding the plausibility of her claim and its sufficiency as a
9 matter of law. (Docket Nos. 13, 14, 34-36.) Mindful that Plaintiff is *pro se* and receiving manual
10 notification, the court extended the period by which she was required to comply. Still, nothing. The
11 court finds this “extremely protracted inaction” violates Rule 41(b) and the district court’s inherent
12 power to regulate its docket. Cosme Nieves v. Deshler, 826 F.2d 1, 2 (1st Cir. 1987). The court
13 warned Plaintiff on multiple occasions to update it and Plaintiff has not complied. Plaintiff’s
14 disregard for this case and failure to comply with the court’s orders constitute extremely severe
15 indifference to attention and the court’s authority.

16 B. Legitimacy of Excuses, Mitigation of Excuses, and Prejudice to the Other Side

17 Plaintiff has lodged no excuses. There are only two the court can envision: (1) she proceeds
18 *pro se* and (2) she has not received manual notification. As the docket demonstrates, however, the
19 court has walked Plaintiff through how to apply for pro bono counsel and even granted such a
20 motion that should have cured any potential disadvantage she endured by not having a legal
21 education or an attorney. Second, Plaintiff responded to manual notifications in the past to comply
22 with other court orders at Docket Nos. 12-14. It appears that she receives the notifications.

23 C. Repetition of Violations and Deliberate Misconduct

24 Plaintiff has been cited as failing to comply with five direct orders with three pertaining to
25 the show-cause order. (Docket Nos. 34-36.) The court does not know whether the conduct was
26 deliberate or negligent.

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D. Adequacy of Lesser Sanctions

The court could sanction Plaintiff in several ways, including a warning, formal reprimand, a fine, imposition of costs or fees, temporary suspension, and dismissal. The court already warned Plaintiff to submit filings multiple occasions. Fining Plaintiff or imposing costs and fees seems counterproductive and insufficient.

E. Other Relevant Factors

Plaintiff proceeds *pro se* and so the court is mindful of this fact. But it has instructed her on how to move for appointment of pro bono counsel and Plaintiff is aware of this process.

IV. Conclusion

For the aforementioned reasons, the court **DISMISSES** this case **without prejudice** pursuant to Rule 41(b).

SO ORDERED.

In San Juan, Puerto Rico this 11th day of August, 2014.

/S/ Gustavo A. Gelpí

GUSTAVO A. GELPI

United States District Judge